UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK, d/b/a PETS WAREHOUSE AND PETSWAREHOUSE.COM Plaintiff, v. OVERTURE SERVICES, INC, GOOGLE, INC., INNOVATIVE MARKETING SOLUTIONS, INC., d/b/a KANOODLE.COM, NEEPS INC d/b/a THEFERRETSTORE.COM, JOHN HOLDEFEHR d/b/a JUDGE-FOR-YOURSELF.COM, BIOCHEMICS, INC. d/b/a DOCTORDOG.COM, Defendants.	)	No. CV 02 5164 (DRH) (WDW)

DECLARATION OF PHILIP A. JONES

I, PHILIP A. JONES, declare as follows:

1. I am an attorney at Brinks Hofer Gilson & Lione. I represent Overture Services, Inc., in this action. Except where set forth below, I have personal knowledge of all facts set forth in this declaration. If called upon as a witness, I could competently testify as to the following.

2. On October 27, 2004, my colleague Scott Slavick, caused to be served on Mr. Novak by overnight courier the following documents: (1) Defendant Overture Services, Inc.'s First Set of Interrogatories to Plaintiff Robert Novak d/b/a Pets Warehouse and Petswarehouse.com; (2) Defendant Overture Services, Inc.'s First Request for Production of Documents and Things to Plaintiff Robert Novak d/b/a Pets Warehouse and Petswarehouse.com; and (3) Defendant Overture Services, Inc.'s First Set of Requests for Admissions to Plaintiff

Dockets.Justia.com

Robert Novak d/b/a Pets Warehouse and Petswarehouse.com. (collectively "Overture's Discovery Requests"). Copies of these documents are attached hereto as Exhibits A, B, & C.

3. As of today's date, Mr. Novak has failed to answer Overture's Interrogatories, failed to produce responsive documents, failed to respond to the Requests for Admission, and failed to make any objections to Overture's Discovery Requests.

4. On December 6, 2004, Mr. Novak sent Overture's counsel a letter acknowledging receipt of Overture's Discovery Requests. A copy of Mr. Novak's December 6, 2004, letter is attached hereto as Exhibit D. At no time did Mr. Novak request an extension of time to respond to Overture's discovery requests.

5. On December 10, 2004, Mr. Slavick caused to be served on Mr. Novak via facsimile and UPS, an overnight courier, the Notice of Discovery Deposition of Robert Novak. The Notice called for Mr. Novak's deposition on December 21, 2004.

6. On December 13, 2004, I spoke with Mr. Novak by telephone. I agreed to postpone Mr. Novak's deposition until December 29, 2004. I inquired when Mr. Novak would provide us with responses to Overture's Discovery Requests. Mr. Novak was unable to provide me with a date certain by which he would respond. I advised Mr. Novak that it was Overture's position that its Requests for Admission should be deemed admitted, and that Mr. Novak's objections to Overture's Discovery Requests should be deemed waived because of Mr. Novak's failure to timely respond.

7. On December 14, 2004, I again spoke with Mr. Novak by telephone. He said he would be able to provide responses to Overture's Discovery Requests by December 21. I subsequently advised Mr. Novak that because of the holidays this was too close to his deposition date, December 29, and that we would need to receive responses to Overture's Discovery

Requests by December 17, or else we would seek an order from the Court compelling Mr. Novak's responses to Overture's Discovery Requests.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of December, 2004, at Chicago, Illinois.

Philip A. Jones